

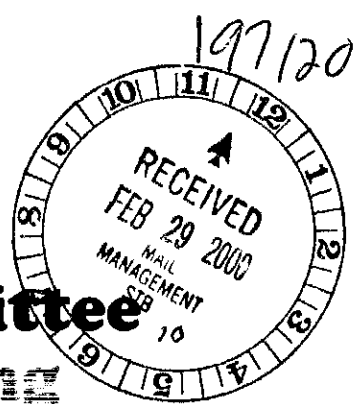


Montana

Wheat & Barley Committee

Research & Marketing

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Before The
Surface Transportation Board

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Ex Parte No. 582
Public Views on Major Rail Consolidations

Statement of
Leonard Schock, Commissioner
Montana Wheat & Barley Committee

The Montana Wheat & Barley Committee (MWBC) herewith submits this its Statement in the above-described proceeding. The MWBC thanks the Board for the exploration of this most important subject. Rail customers in Montana have experienced the monopoly domination by a single railroad as a result of years of federal merger policy that largely ignores the importance of maintaining as much market competition as possible and avoids providing customers located in non-competitive markets with adequate economic regulatory protections. The announcement of the BN/CN merger on December 20, 1999, followed by the response of the nation's other large railroad carriers on January 11, 2000 indicating this merger will move them to defensively merge into a two monopoly system, demonstrates that we are collectively facing our final opportunity to return some measure of rail-to-rail competition in markets that desperately require it.

Background:

My name is Leonard Schock. I am a Commissioner on the Montana Wheat & Barley Committee. I am a farm producer from Vida, Montana. My wife and I are typical farm producers in Montana raising barley, wheat and safflower.

Jim Christianson Executive Vice President

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My wife and I have spent our whole life on the farm, raising a family of four children. I have served as a Director of the Wheat Export Trade Education Committee, Alternate Director of U.S. Wheat Associates, Director of the Northern Crops Institute, Past Chairman of the Montana Wheat & Barley Committee and a member of the National Barley Improvement Committee.

The Montana Wheat & Barley Committee is a wheat and barley producer-supported organization representing the interests of 14,500 producers in Montana.

Montana has always been a natural resources state with its main economy built upon products of the mine, forest and land, and we expect these to remain the foundation of our economy in the future. In order for our bulk mineral, lumber and agricultural products to have value, they require bulk transportation (rail) to points outside Montana and, in many cases, outside the U.S. Therefore, the State's economic survival depends on having access to good, affordable, and adequate rail transportation and attendant facilities, with published notice of rates and rules, so that its shippers can deliver a competitive priced product outside the state boundaries. However, Montana's shippers have one major railroad, the BNSF Railroad, operating as a monopoly in the transportation of bulk commodities from the farm to market.

Montana Wheat and Barley producers do not have economic alternatives to rail transportation. They are captive and tied to rail transportation with no viable alternatives. The Montana Wheat and Barley producers are unique because they bear the cost of freight transportation and cannot pass on increased transportation costs to their customers. Virtually every other industry has some capability of passing on some or all of its increased costs to its consumers or customers. The farm producer, however, operates in an environment where he/she does not have any control over the price received for the crop. He/she must bear every increase in all costs, including transportation costs, without any possibility to pass those higher costs on to anyone else.

OUTLINE OF INDUSTRY IN MONTANA

1. The wheat industry in Montana is characterized by an export-dominant rail movement.

2. The barley industry in Montana is characterized by both an export and domestic market dominated by rail.
3. The lumber industry in Montana is characterized by both an export and domestic market dominated by rail.
4. The coal industry in Montana is characterized by domestic rail movement.

MONTANA IS AN EXPORT STATE

Montana is nationally ranked in agricultural production. Montana ranks 3rd in all wheat production, 5th in winter wheat production, 4th in spring wheat production, 2nd in barley production, and 2nd in oats production in the U.S. (Source: Montana Agricultural Statistics Service)

For the farm producer, the cost of transporting grain can represent as much as one third (1/3) the overall price received for the grain.

MONTANA RAIL TRANSPORTATION IS PREDOMINATED BY ONE CARRIER

Montana's rail infrastructure is dominated by the BNSF Railroad which controls over 96% of all rail miles, over 95% of all grain elevator and terminal sites, and which moves 98%+ of all wheat from the state. BNSF controls and dictates the rail rates in all movements from Montana eastbound or westbound. Annually, the Montana producers move about 150 million+ bushel production that is handled by rail from Montana and bear about \$200+ million in freight transportation charges per year.

HOW DID MONTANA BECOME DOMINATED BY A SINGLE MONOPOLY RAILROAD CARRIER?

Recently, an eastern newspaper reporter asked an interesting question, "You complain about the lack of rail competition out there in Montana, but you chose to live out there!" But when I grew up here in Montana, and in the late 1960's, we had FOUR transcontinental railroads serving the state. It is because of a failed Federal merger regulatory policy that we have NO RAIL-TO-RAIL COMPETITION, and thus, no options.

In 1970, after many years of back and forth wrangling, the ICC allowed the Northern Pacific (NP), Great Northern (GN), and the Chicago, Burlington and Quincy (CB&Q) to merge, in the Northern Lines case, over objections of Montanans, northern plains agriculture, Congress and the Justice Department. The premise was the Chicago, Milwaukee, St. Paul and Pacific (Milwaukee Road) would provide competition right through the middle of the newly formed BN system.

By 1978, the Milwaukee Road was in bankruptcy, unable to mount a competitive challenge to the BN, which competing for the same traffic, completely surrounded the Milwaukee Road on all sides. After the demise of the Milwaukee Road in 1980, the ICC refused to reopen the BN merger and reconstitute competitive balance, leaving Montana under the total dominance of a single monopoly railroad.

The result today is the highest grain freight rates in the nation. Montana rail customers experience car shortages that start earlier and last longer than anywhere else in the growing areas, essentially robbing the Montana grain producers of the ability to participate in price increases in the market. Today over 1/3 of the price received by Montana grain producers goes to the monopoly railroad, and that percentage continues to rise. I myself pay freight rates of \$1.12/bushel to move my wheat on a unit train to Portland, Oregon.

Faced with the effects of a railroad monopoly that was withering a key element of the state's economy, Montana filed a class-action and formal complaint pursuing the McCarty Farms case for 17 years, wherein the ICC on December 14, 1984 found that the BN had market dominance and that its rates were unreasonable. The Administrative Law Judge (ALJ) further found that the rates were higher than 300% of variable cost! Yet, this Board in 1997, found that these rates were not excessive! It was never anticipated by the ICC/STB that a whole state would be found captive to a single railroad. After all, that would admit failed nation merger policy. Captive railroad customers' in Montana spent over \$3.2 million pursuing the McCarty Farms case, (excluding attorneys' fees) without success.

Yet, look at the record in the Northern Lines merger and at the Congress and the Justice Department warnings of the eroding intramodal railroad competition in the Montana arena.

The “Northern Lines” reached an agreement with the C&NW and the Milwaukee Road in which the proposed merged railroad agreed that it would not oppose the merger of the latter two, and vice versa. This major change in position by the C&NW and the Milwaukee Road met with very unfavorable reaction from the Justice Department. In fact, the Department of Justice curtly declared, “There is no basis for reconsideration of the Commission’s decision.”¹ Furthermore, the D&RGW Railroad charged, “Nowhere in the Interstate Commerce Act are the railroads given the right to contractually ‘carve up markets’ and utilize the Commission as a rubber stamp for such purposes, or, as is the case here, to ignore the Commission entirely.”²

The full Commission considered the above positions and decided, by a 10-to-2, vote in *favor* of the proposed merger on November 30, 1967.

The majority said they approved the merger because: “We believe that the overall effect of the conditions imposed here will portend for a strong degree of intramodal rail competition in the affected territory; promote the effective development of improved transportation services to the shipping and receiving public, and comport generally with the purposes and objectives of the national transportation policy as declared in the interstate commerce act.”³ Commissioners Paul J. Tierney and Virginia Mae Brown based their dissents primarily on the issue of lessened rail competition in the Northwest.⁴

History has shown the ICC was wrong and that the Northern Lines’ newly-created Burlington Northern, Inc. became a total monopoly and eliminated all intramodal rail competition in the area.

¹ “ ‘Northern Lines’ and C&NW – Milwaukee Will Support Each Others’ Merger Plans,” *Traffic World* (Oct. 29, 1966), p. 72

² “ICC Asked to Probe Pact Between ‘Northern Lines’ and C&NW – Milwaukee,” *Traffic World* (Nov. 26, 1966), p. 57

³ *Great Northern Pac. & B. Lines, Merger – Great Northern*, 331 I.C.C. 228, 283 (1967).

⁴ *Ibid*, pp. 292-299

Why do Montana grain producers pay the highest freight rates in the nation? Simple. The ICC/STB's nation merger policy has allowed this nation's railroads to become total monopolies dominating not just individual rail customers, but now whole states and entire industries.

The STB/ICC has chosen to foster bigger and bigger railroads at the expense of captive rail customers. The ones most adversely affected by the development of larger and larger railroad monopolies in this country are the railroad customers.

OUR PLEA FROM MONTANA WHEAT & BARLEY PRODUCERS TO THE STB REGARDING FUTURE RAIL MERGER POLICY

Please hear our voice from Montana where we are dominated by a single monopoly railroad carrier – do not continue down this path of ever increasing size and continued diminishment of rail customer choice. “Bigger” does not necessarily result in “better” and in fact, “bigger” has only offered rail customers in Montana a monopoly railroad that offers poor service at an exorbitant rate. Rail customers deserve competition first, and if necessary, regulatory protection from federally created monopolies that limit the customer's ability to participate in markets; we deserve a choice of railroad carriers. Open up the current railroad system to competition and allow rail customers a choice of rail carriers. If STB doesn't change its approach to rail mergers in a way that promotes a resurgence of competition among railroads, the legislative changes required in the future will be far more invasive than anything being proposed today. And if the STB does not have the authority to do so independently, we have reached a crossroads where this Board must recommend legislative changes that would grant it the authority to act. In either case, look for rail customers to continue to look to Congress and other departments and agencies in the Executive Branch to seek relief from this federally-imposed rail concentration.

Montana Wheat & Barley Committee has a suggestion for the Board to consider. We think it would appropriate for the Board to consider establishment of one or several demonstration projects to explore the impacts of various approaches to competitive access. Since the state of Montana is completely captive to one railroad, it may be the

perfect area in which to experiment with ways to return competition to an industry where the number of industry players are extremely limited. Other areas of the country might be identified according to unique situations as well. In Montana, for example, a demonstration project of some defined duration might allow an open access system to operate, allowing Montana Rail Link (Class II) and Central Montana Railroad (Class III) railroads and the BNSF (Class I) to compete for Montana customers. Several other areas of the country with different configurations and customer needs might be identified where rail customers could get bottleneck rates, or be able to ask for competition in terminal areas. To be truly useful in assessing the impact and benefits of various approaches to restoring competition, each of the major railroads of this country should have some portion of their operations in a demonstration project area. The STB could monitor service, etc. over a defined period, we'd suggest 2 years, and prepare a report on each project that could be the subject of further public hearing and debate. This sort of creative, yet gradual and controlled approach to restoring competitive access would start to tell us a great deal about potential benefits and adverse impacts. It would also allow the Board the opportunity to better assess the implications of the rail industry's configuration in the future.

Thank you for the opportunity to offer my insights and suggestions to this proceeding, and I hope that you will give serious consideration to a demonstration project approach.

A handwritten signature in cursive script that reads "Leonard Schock". The signature is written in dark ink and is positioned above the printed name.

Leonard Schock, Commissioner,

Montana Wheat & Barley Committee

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